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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,966	09/06/2001	Larry Neil Mackey	U 013595-2	6640

27752 7590 09/16/2005

THE PROCTER & GAMBLE COMPANY
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,966

Applicant(s)

MACKEY ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-18 and 20-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-18 and 20-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed June 29, 2005, has been entered. Claims 1-10 and 19 are cancelled. Claims 11, 29, and 30 are amended as requested. Thus, the pending claims are 11-18 and 20-32.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 11-12, 15-18, 20-32 stand rejected under 35 USC 103(a) as being unpatentable over US 4,243,480 issued to Hernandez et al. as set forth in sections 4, 6, and 7 of the last Office Action.

Applicant has amended the claims to limit the average fiber diameter to less than 5 microns. While Hernandez teaches a fiber diameter of 10-500 microns, it is argued that employing a fiber diameter of less than 5 microns or less would still be obvious to one skilled in the art. Specifically, it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Smaller fiber diameters would increase the total fiber surface area of the fibrous structure, thereby enhancing absorbency and hand. Additionally, applicant has not provided evidence of any criticality for or unexpected results obtained by the claimed fiber diameter. Thus, it is believed the claimed range is obvious over the prior art.

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4. Claim 14 stands rejected under 35 USC 103(a) as being unpatentable over the cited Hernandez reference in view of US 5,516,815 issued to Buehler et al. for the reasons of record.

Response to Arguments

5. Applicant traverses the above rejections by asserting that the claimed invention is “not rendered obvious over Hernandez because Hernandez fails to teach each and every element of claims 11, 29, and 30, as amended (Amendment, page 5, 4th paragraph). In response, the examiner agrees that Hernandez does not teach “each and every element” of the claimed invention. As such, the rejection is not a 102 anticipation rejection, but rather a 103 rejection. However, it is reasserted that the claims are obvious over the Hernandez reference. As discussed above, it would have been obvious to one of ordinary skill in the art to select a fiber diameter less than 5 microns since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Additionally, it is noted that the capability of producing finer fibers has greatly improved in recent years. Said fibers have improved properties, such as soft hand, good absorbency, etc. Therefore, applicant’s arguments are found unpersuasive and the above rejection stands.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cj
September 14, 2005

CHERYL A. JUSKA
PRIMARY EXAMINER